

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES ANDERSON MILLER,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS AND REHABILITATION
(CDCR), et al.,

Defendants.

Case No. [16-cv-02431-EMC](#)

**ORDER PERMITTING SUCCESSIVE
MOTIONS FOR SUMMARY
JUDGMENT AND SETTING
BRIEFING SCHEDULE**

Docket Nos. 164, 166, 170

This is a *pro se* prisoner's civil rights action in which Plaintiff claims that defendants responded inadequately to his needs for a total knee replacement (TKR) and pain medication. Defendants moved for summary judgment on the merits of the federal constitutional claims but did not move for summary judgment on the merits of the state law claims asserted by plaintiff. The Court granted in part and denied in part that defense motion for summary judgment on January 24, 2018. Docket No. 134.

Defendants now request permission to file two new motions for summary judgment – one motion for summary judgment to address state law claims pertaining to Plaintiff's request for a TKR and a separate motion for summary judgment to address state law claims pertaining to Plaintiff's pain medication and retaliation claims. Defendants filed the two motions for summary judgment concurrently with their request for permission to file those motions.¹ Plaintiff responds

¹ Defendants further urge that, if the Court does not grant them leave to file the new motion for summary judgment regarding the pain medication state-law claims, the Court should remand those claims to state court. Because the Court will permit the new motions for summary judgment, it does not reach the remand question.

1 to Defendants' various filings with a motion for an extension of time to oppose the two requests
2 for permission to file new motions for summary judgment as well as for an extension of time to
3 oppose the two new motions for summary judgment.

4 Under this Court's standing order, a party may file only one motion for summary judgment
5 unless permission is obtained from the Court to file a successive motion for summary judgment.
6 The Ninth Circuit has held that "district courts have discretion to entertain successive motions for
7 summary judgment." *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010). A successive
8 motion for summary judgment "is particularly appropriate on an expanded factual record." *Id.*

9 Although the Court is dismayed that Defendants did not make all their arguments in their
10 original motion for summary judgment and greatly delayed in filing their successive motions for
11 summary judgment, the interests of justice will be best served by permitting the successive
12 motions for summary judgment in this case. Substantial judicial resources and juror time are
13 expended whenever a trial is held; it is not sensible to expend these when it may not necessary to
14 do so. Defendants have presented a substantially expanded factual record (compared to that
15 presented in their original motion for summary judgment) and have included new arguments on
16 the state-law claims that were not included in the original motion for summary judgment. There
17 appear to be at least some potentially meritorious arguments for relief in Defendants' successive
18 motions for summary judgment. Also, Defendants' failure to argue the merits of the state law
19 claims in their original motion for summary judgment is somewhat understandable: given the
20 many cases in which the federal courts have dismissed or remanded to state court the state law
21 claims once the federal claims have been resolved, Defendants perhaps were unduly optimistic
22 that their original motion for summary judgment would resolve all the federal claims and result in
23 a remand of the rest of the action to state court.

24 Plaintiff argues at length in his 13-page request for an extension of the deadlines to oppose
25 the requests and motions that the successive motions for summary judgment should not be
26 permitted because, among other things, Defendants waived the state-law arguments by not making
27 them in their original motion for summary judgment. His waiver argument finds no support in the
28 law. The Ninth Circuit has held that successive motions for summary judgment are permissible

1 and “particularly appropriate” on an expanded factual record, as is the case here.

2 For the foregoing reasons, Defendants’ requests for leave to file successive motions for
3 summary judgment are **GRANTED**. Docket Nos. 164, 166. The Court will permit Defendants’
4 motion for summary judgment regarding the medication and retaliation state-law claims (Docket
5 No. 165) and Defendants’ motion for summary judgment regarding the TKR state-law claims
6 (Docket No. 167).

7 Plaintiff’s request for an extension of the deadlines to oppose the requests to file
8 successive motions for summary judgment and to oppose the successive motions for summary
9 judgment is **GRANTED IN PART AND DENIED IN PART**. Docket No. 170. The Court will
10 not extend the deadline for Plaintiff to file his *oppositions to the requests to file successive*
11 *motions* for summary judgment because he has adequately presented the reasons he opposes the
12 requests and there is not good cause to wait another thirty days to hear further argument from him
13 that would result in a multi-month delay of briefing on the successive motions for summary
14 judgment. However, the deadline for Plaintiff to file his *oppositions to the two successive motions*
15 *for summary judgment* will be extended, however.

16 The Court now sets the following briefing schedule. No later than **August 20, 2019**,
17 Defendants must mail to Plaintiff a copy of every case, statute, and rule cited in their new motions
18 for summary judgment. No later than **October 4, 2019**, Plaintiff must file and serve his
19 oppositions to the new motions for summary judgment. No later than **October 11, 2019**,
20 Defendants must file and serve their reply briefs, if any.

21 The parties are expected to keep the two new motions for summary judgment separate.
22 That is, Plaintiff should file an opposition to the motion for summary judgment regarding
23 medication and retaliation state-law claims and a separate opposition to the motion for summary
24 judgment regarding the TKR. Similarly, Defendants should file two separate reply briefs.

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Plaintiff is reminded that his declaration may not include legal argument and instead must be limited to statements of fact of which he has personal knowledge. Each opposition brief shall not exceed 25 pages of text. Each reply brief shall not exceed 15 pages of text.

IT IS SO ORDERED.

Dated: August 8, 2019


EDWARD M. CHEN
United States District Judge